

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>HIGINO CRUZ</b>	)	
Claimant	)	
VS.	)	
	)	
<b>DRAGON INN, INC.</b>	)	Docket No. 248,633
Respondent	)	
AND	)	
	)	
<b>FREMONT COMPENSATION</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed Administrative Law Judge Julie A. N. Sample's November 16, 1999, preliminary hearing Order.

**ISSUES**

Claimant seeks medical treatment and temporary total disability benefits for injuries he received on September 29, 1999, while employed by the respondent. On that date, a co-worker attacked claimant with a large kitchen knife. As a result of the assault, claimant sustained severe cuts to both arms with the left arm receiving the more severe injury.

The Administrative Law Judge denied the requested preliminary hearing benefits. She found claimant's injuries did not arise out of the employment relationship. She concluded the dispute between the two employees was a personal matter and had no relationship with the conditions or incidents of the employment.

On appeal, claimant contend the claim is compensable because the assault occurred at work, the assailant was a co-worker, and respondent's manager, who was present during the assault, failed to stop or intervene in the assault.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board concludes that the Administrative Law Judge's preliminary hearing Order should be affirmed.

On appeal, the threshold question is whether, under the facts and circumstances of this case, the injuries sustained by the claimant at work from an assault of a co-worker are

compensable. If an employee is injured in a dispute with another employee over the conditions and incidents of the employment, then the injuries are compensable.<sup>1</sup> Although the dispute doesn't involve the employment, the employee's injuries are compensable if the injuries are exacerbated by an employment hazard.<sup>2</sup> Further, an employee's injuries are compensable, although the assault is a result of a personal matter and not associated with the employment, if the employer had reason to anticipate the assault and continued to allow the employees to work together.<sup>3</sup>

The Appeals Board finds, as did the Administrative Law Judge, that claimant was injured when a co-worker assaulted claimant over a personal matter that had no relationship to the work. Although the manager was present during the assault, there is no evidence she could have anticipated the assault. Finally, all of claimant's injuries were caused by the co-worker's assault and were not exacerbated by any particular employment hazard.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Julie A. N. Sample's November 16, 1999, preliminary hearing Order should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2000.

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BOARD MEMBER

c: Michael R. Lawless, Overland Park, KS  
Gary R. Terrill, Overland Park, KS  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup>See Springston v. IML Freight, Inc., 10 Kan. App. 2d 501, 506-507, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

<sup>2</sup>See Baggett v. B & G Construction, 21 Kan. App. 2d 347, Syl. ¶ 2, 900 P.2d 857 (1995).

<sup>3</sup>See Harris v. Bethany Medical Center, 21 Kan. App. 2d 804, Syl. ¶ 2, 909 P.2d 657 (1995).